

## Update: Criminal Procedure Monograph 5— Preliminary Examinations (Revised Edition)

### 5.5 Scope of Preliminary Examinations

#### A. Probable Cause Standard

Add the following language at the end of Section 5.5(A) on page 8:

In *People v Yost*, \_\_\_ Mich \_\_\_, \_\_\_ (2003), the Supreme Court emphasized that existing case law requires a magistrate to pass judgment on the credibility of the witnesses when determining whether a crime has been committed. The Court further indicated that a magistrate has the same duty and responsibility with regard to both lay and expert witnesses. *Id.* at \_\_\_.

The Court in *Yost* also addressed the “gap” between probable cause and reasonable doubt:

“The fact that the magistrate may have had reasonable doubt that defendant committed the crime was not a sufficient basis for refusing to bind defendant over for trial. As we indicated in [*People v Justice (After Remand)*, 454 Mich 334, 344 (1997)], a magistrate may legitimately find probable cause while personally entertaining some reservations regarding guilt.” *Yost, supra* at \_\_\_.

## 5.22 Closure of Preliminary Examinations to Members of the Public

Replace the second to last paragraph on page 34 with the following language:

Effective May 1, 2003, Administrative Order 2001-38 amends MCR 8.116(D). MCR 8.116(D) now provides:

“(1) Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless

(a) a party has filed a written motion that identifies the specific interest to be protected, or the court *sua sponte* has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;

(b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and

(c) the court states on the record the specific reasons for the decision to limit access to the proceeding.

“(2) Any person may file a motion to set aside an order that limits access to a court proceeding under this rule, or an objection to entry of such an order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies the motion or objection, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

“(3) Whenever the court enters an order limiting access to a proceeding that otherwise would be public, the court must forward a copy of the order to the State Court Administrative Office.”

## 5.43 Circuit Court Review of Errors at Preliminary Examinations

### B. Prosecutor's Appeal to Circuit Court

Add the following language at the end of Section B on page 56:

In *People v Yost*, \_\_\_ Mich \_\_\_, \_\_\_ (2003) the Supreme Court reviewed case law regarding the standard for reversing a magistrate's bindover decision. The Court provided:

"Our case law has sometimes indicated that a reviewing court may not reverse a magistrate's bindover decision absent a 'clear abuse of discretion,' e.g., *People v Dellabonda*, 265 Mich 486, 491; 251 NW 594 (1933); [*People v Doss*, 406 Mich 90, 101(1979)]. At other times our case law has omitted the word 'clear' and has simply required a reviewing court find an 'abuse of discretion,' e.g., *Genesee Prosecutor v Genesee Circuit Judge*, 391 Mich 115, 121; 215 NW2d 145 (1974); [*People v Justice (After Remand)*, 454 Mich 334, 344 (1997)]."

In *Yost*, after a seven-day preliminary exam, the magistrate refused to bind the defendant over for trial on first-degree murder. The magistrate indicated that credible evidence of a homicide was lacking. *Yost, supra* at \_\_\_\_\_. The prosecutor appealed the magistrate's decision to the circuit court. The circuit court concluded that the record established a sufficient basis for finding that a homicide was committed and probable cause to believe the defendant committed it. The circuit court held that the magistrate had abused his discretion in refusing to bind defendant over. *Id.* at \_\_\_\_\_. On leave granted, the Supreme Court upheld the circuit court's decision and stated:

"[W]e agree with the circuit court that the expert testimony in tandem with the circumstantial evidence, which included evidence relating to motive and opportunity, was sufficient to warrant a bindover. . . . [T]he magistrate abused his discretion when he concluded from all the evidence that probable cause to bind defendant over for trial did not exist. . . . The fact that the magistrate may have had reasonable doubt that defendant committed the crime was not a sufficient basis for refusing to bind defendant over for trial. As we stated in [*People v Justice (After Remand)*, 454 Mich 334, 344 (1997)], a magistrate may legitimately find probable cause while personally entertaining some reservations regarding guilt." *Yost, supra* at \_\_\_\_\_.